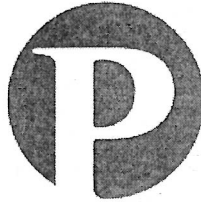


1176 Boulevard Way  
Walnut Creek, CA 94595  
Telephone (925) 947-5700  
Facsimile (925) 935-8488



San Diego, CA  
Santa Barbara, CA  
Walnut Creek, CA  
Washington, DC

## PALADIN LAW GROUP® LLP

*Generating Professional:*  
John R. Till, Walnut Creek Office  
JTill@PaladinLaw.com

July 11, 2014

***Via Registered Mail, Return Receipt Requested***

Pacific Gas & Electric Company  
C/O Linda Y. H. Cheng  
77 Beale Street, 24th Floor  
San Francisco, California 94105

Re: *Notice of Endangerment and Intent to Sue Under RCRA § 7002(a)(1)(B), Notice of Violation and Intent to File Suit Under CWA § 301 and ESA § 9, Regarding Contamination at 1950 California Street, Redding, CA*

Dear Ms. Cheng:

We have been retained by Mr. Jason Baker and Mrs. Peggy Baker (“the Bakers”) in connection with their claim against you arising out of contamination at 1950 California Street, a commercial property located in Redding, California (“the Baker Property”). We are writing to you to give notice that the Bakers intend to file a civil action against Pacific Gas and Electric Company (“PG&E”) under Resource Conservation and Recovery Act (“RCRA”) § 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B), alleging that PG&E is liable as a “past or present generator [and] past or present owner or operator of a treatment, storage, or disposal facility, who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment.” The Bakers also intend to file a civil action against PG&E under Clean Water Act (“CWA”) § 301, 33 U.S.C. § 1311, alleging PG&E is liable for civil penalties for the discharge of pollutants to waters of the United States without a National Pollution Discharge Elimination System (“NPDES”) permit. Additionally, the Bakers intend to file a civil action against PG&E under Endangered Species Act (“ESA”) § 9, 16 U.S.C. § 1538, alleging that PG&E is potentially liable for civil penalties under § 9 of the ESA for taking of an endangered species. A similar notice letter was sent on March 6, 2014, addressed to:

Pacific Gas & Electric  
C/O Ruben Castellon  
CASTELLON & FUNDERBURK LLP  
3200 Danville Blvd., Suite 100  
Alamo, CA 94507

Mr. Castellon, counsel for PG&E, challenged the sufficiency of the service of that notice. Although we do not concur with Mr. Castellon’s evaluation of the March 6, 2014, notice, we are providing this additional notice to the registered agent for Mr. Castellon’s client. Mr. Castellon responded to the March 6, 2014, notice on behalf of PG&E and a mediation date of July 21, 2014, has been set. The mediation will be an effort to resolve this matter before the commencement of any litigation.



Specifically, PG&E is the past and present owner and operator of the PG&E Property and PG&E Facility, adjacent to the Baker Property and Calaboose Creek, from which the contamination at the site was released and is emanating from. We understand that the current PG&E Property and Facility was previously part of a larger parcel identified as being bounded by South Street, Center Street (now known as Waldon Street), California Street, and Gold Street ("PG&E Property"). PG&E is the past owner and operator of a manufactured gas plant ("MGP") at the PG&E property and facility,<sup>1</sup> during which time chemicals were used, handled, stored, disposed, and released into the environment and which remain and continue to migrate in the environment. The contamination at or emanating from the soil, surface water, creek, and groundwater at the PG&E Property and Facility includes polycyclic aromatic hydrocarbons ("PAHs") such as naphthalene, total petroleum hydrocarbons as gasoline and diesel ("TPH-g" and "TPH-d," respectively), benzene, toluene, ethylbenzene, and xylenes ("BTEX"), as well as crude oil and "other solvent or non-petroleum hydrocarbon."

**I. The Location of the Imminent and Substantial Endangerment to Health or the Environment, the Discharge of a Pollutant to Waters of the United States Without an NPDES Permit, and the Potential Taking of an Endangered Species**

The Baker Property is a commercial tract located at 1950 California Street in Redding, California, and contains an 11,500 sq. ft. building. PG&E has taken the position in response to the prior notice that it did not own or operate on the Baker's Property, but admits that it owned and operated the PG&E property and facility adjacent to the Bakers' Property and the creek and that the current PG&E Property and Facility was part of a larger parcel. PG&E subdivided the larger parcel and sold different parcels to private parties. An MGP was operated at the site from 1886 to 1947. PG&E acquired the MGP in October 1919. Equipment from the MGP was removed at least as late as the 1960s. PG&E was the owner and operator of the property and facility at the time chemicals were used, handled, stored, disposed, and released into the environment and caused or contributed to the contamination at and emanating from the PG&E Property and Facility.

The term "Site" includes the environment, including soil, groundwater, vapor, and buildings, and any location at which hazardous substances, hazardous materials, or solid waste has come to be located or may be threatened with such contamination. The Site includes the PG&E Property and Facility prior to the property being subdivided, it includes the Baker Property, Calaboose Creek, and down gradient surface water and groundwater which has been impacted or which may be impacted by the chemicals at and emanating from the current and former PG&E Property and Facility. PG&E continues to operate an unmanned gas regulator station on the portion of the Site it still owns. In 1986, contamination was discovered at the Site in the soil and groundwater. The contamination includes petroleum hydrocarbons, crude oil, and "other solvent or non-petroleum hydrocarbon." These hazardous substances, hazardous materials, and solid waste are migrating in the environment and have and continue to contaminate environmental media, including soil, groundwater, surface water in the creek, and soil vapor at and emanating from the Site.

The Bakers purchased the Baker Property on or about April 20, 2011. Since their purchase of the property, the Bakers have operated a business on the property which did not use any products that contain the identified contaminants found at or emanating from the PG&E Property and which have become located at the Bakers' Property. The contamination was not disclosed to the Bakers at the time of purchase, and they did not learn of the contamination until after the purchase. The Bakers are and have been in the process of attempting to lease and/or sell the property. Due to the contamination at the Site, the Bakers have had potential tenants decline to lease the property and are currently forced to offer the property for lease at significantly less

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<sup>1</sup> The Central Valley Regional Water Quality Control Board Site I.D. number for the location is 2050102. The Department of Toxic Substances Control case number for the site is 45490001.



than comparable market value. The Bakers are not willing to have a deed restriction on their property and demand that PG&E properly investigate and remediate the contamination at and emanating from the current and former PG&E Property and Facility. At this point, the Bakers have lost significant rental income and at least one sale for over \$900,000 for the purchase of their property because of the contamination at and emanating from the PG&E Property and Facility onto, under, and in the vicinity of the Baker Property.

## **II. The Hazardous Waste Which May Present and Imminent and Substantial Endangerment to Health or the Environment, the Discharge Pollutants to Waters of the United States Without an NPDES Permit, and the Potential Taking of an Endangered Species**

In 1986, contamination was discovered at and emanating from the PG&E Property and Facility in the soil, surface water of the creek, and groundwater, including PAHs such as naphthalene, TPH-g, TPH-d, and BTEX, as well as crude oil and "other solvent or non-petroleum hydrocarbon." In 1998, PG&E entered an enforcement agreement with the California Department of Toxic Substances Control ("DTSC"). Some five to six years later, during a 2003-2004 remediation excavation, arsenic and PAH-impacted soil were detected and partly removed. However, these actions were not sufficient to protect human health or the environment. As recently as January 2014, two-year trends for both TPH-g and TPH-d were reported as upward at two wells at the Site, including one situated at the northeast corner of the Baker Property. Concentrations of TPH-g and TPH-d in the groundwater were detected as high as 1,400 µg/L and 1,900 µg /L, respectively, over ten times greater than the Regional Water Quality Control Board's ("RWQCB") recommended environmental screening levels (ESLs). The contamination at and emanating from the Site impacts an underground aquifer used for drinking water supply. The direction of flow in the aquifer is to the southeast, towards Calaboose Creek, which receives inflow from the aquifer below and the Baker Property. PG&E discharged pollutants at and into the environmental media at the Site, including soil, groundwater, vapor and/or surface waters and sediment of Calaboose Creek and connected waterways at, connected with, and emanating from the Site. There is a significant nexus between the groundwater at the Site and Calaboose Creek, a water of the United States.

A 2003 Final Remedial Action Plan (RAP) prepared for PG&E noted the presence of contamination along the bank of Calaboose Creek, which is a habitat for endangered species such as the Chinook salmon and steelhead. The RAP included a Screening-Level Ecological Risk Assessment that noted, "These findings indicate that some form of focused remediation may be appropriate along the western bank of Calaboose Creek to mitigate exposure to PAH and metals in the black material and bank soils. Further investigation and assessment of conditions in Calaboose Creek does not appear to be warranted and therefore, no recommendations for further action are proposed." The RAP and corresponding Ecological Risk Assessment did not mention any endangered species. No further investigation of the impact or potential impact on endangered species from contamination at the Site was performed. Despite the recommendations in the RAP for additional remediation, no further remedial action was taken. In 2005, the National Marine Fisheries Service (NMFS) designated critical habitat for two Evolutionarily Significant Units (ESUs) of Chinook salmon and five ESUs of steelhead. 70 Fed. Reg. 52,488 (Sept. 2, 2005) (codified at 50 C.F.R. § 226.211). Calaboose Creek was specifically designated as critical habitat for the Central Valley steelhead, 50 C.F.R. § 226.221(l)(3)(ii), and the Redding Hydrologic Unit 5508, was designated as critical habitat for the Central Valley Spring Run Chinook salmon. 50 C.F.R. § 226.211(k)(3), (13). Given the NMFS designation of critical habitat and the recommendations in the 2003 RAP, both the investigation of contamination at the Site and the remedial actions, if any, taken by PG&E were insufficient.



### **III. Liability of PG&E for the Contamination, Discharge Without a Permit, and Potential Taking of an Endangered Species**

PG&E is liable under RCRA § 7002(a)(1)(B) as a “past or present generator [and] past or present owner or operator of a treatment, storage, or disposal facility, who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment.” 42 U.S.C. § 6972(a)(1)(B). As such, the court may order PG&E to “take such . . . action as may be necessary” to clean up the contamination at the property. 42 U.S.C. § 6972(a). Furthermore, the court may order PG&E to pay the Bakers’ litigation costs, including reasonable attorneys and expert witness fees, if they prevail in all or part of any litigation against PG&E. 42 U.S.C. § 6972(e).

PG&E is also liable under CWA § 301 for civil penalties for the discharge of pollutants to waters of the United States without an NPDES permit. 33 U.S.C. § 1311. Per 33 U.S.C. § 1365(a), the Bakers may commence a civil action on their own behalf against PG&E for violation of CWA § 301. In addition, the court may order PG&E to pay the Bakers’ litigation costs, including reasonable attorneys and expert witness fees, if they prevail in all or part of any litigation against PG&E. 33 U.S.C. § 1365(d).

Additionally, PG&E is liable for civil penalties under ESA § 9 for the taking of an endangered species. 16 U.S.C. § 1538. Per 16 U.S.C. § 1540(g), the Bakers may commence a civil action on their own behalf against PG&E for any violation of the ESA.

### **IV. Persons Responsible for the Imminent and Substantial Endangerment, the Discharge of a Pollutant to Waters of the United States Without a Permit, and the Potential Taking of an Endangered Species**

PG&E is responsible for the imminent and substantial endangerment, and is jointly and severally liable with any other person or entity who has also contributed to the imminent and substantial endangerment. PG&E is responsible and liable for the discharge of pollutants to waters of the United States without a permit and for the potential taking of an endangered species.

### **V. Names and Addresses of the Persons Giving This Notice**

Mr. Jason Baker and Mrs. Peggy Baker  
c/o John R. Till, Esq.  
PALADIN LAW GROUP® LLP  
1176 Boulevard Way  
Walnut Creek, CA 94595  
Telephone (925) 947-5700  
Facsimile (925) 935-8488



**VI. Counsel**

The Bakers have retained legal counsel to represent them in this matter. Please direct all communications to:

John R. Till  
PALADIN LAW GROUP® LLP  
1176 Boulevard Way  
Walnut Creek, CA 94595  
Telephone (925) 947-5700  
Facsimile (925) 935-8488

In an effort to avoid litigation, the parties have agreed to a mediation session on July 21, 2014, to discuss a negotiated solution to the imminent and substantial endangerment, the discharge of pollutants to waters of the United States, and the potential taking of an endangered species, as described above and in the March 6, 2014, letter. If these negotiations are unsuccessful, we will proceed with the filing of a complaint in federal court.

Very truly yours,

By:

  
John R. Till  
PALADIN LAW GROUP® LLP

cc: ***Via Certified Mail, Return Receipt Requested***  
Administrator, USEPA  
Hon. Eric H. Holder, Jr., U.S. Attorney General  
Regional Administrator, USEPA Region 9  
Director, Department of Toxic Substances Control  
Executive Director, California State Water Resources Control Board  
Executive Officer, San Francisco Bay Region, California Regional Water Quality Control Board

***Via U.S. Mail Only***  
Regional Manager, Northern Region, California Department of Fish and Wildlife  
Jerry Lile, Department of Toxic Substances Control  
Steven Becker, Department of Toxic Substances Control  
Grant Stein, Central Valley Regional Water Quality Control Board  
Ruben Castellon, Castellon & Funderburk LLP